

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

UPON THE PETITION OF

JERRY LEE FAIDLEY,

Plaintiff,

AND CONCERNING
UNITED PARCEL SERVICE OF
AMERICA, INC.,

Defendants.

Case No.

ORIGINAL NOTICE

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby notified that there is now on file in the office of the Clerk of the above court a Petition in the above-entitled action, a copy of which is attached hereto (along with copies of any documents filed with it). The Plaintiff's attorney is Mark D. Sherinian, of the law firm of Sherinian & Hasso Law Firm, whose address is 3737 Woodland Avenue, Suite 630, West Des Moines, Iowa 50266, and whose phone number is 515-224-2079.

This case has been filed in a county that utilizes electronic filing. General rules and information on electronic filing are contained in Iowa Court Rules Chapter 16. Information regarding requirements related to the protection of personal information in court filings is contained in Iowa Court Rules Chapter 16, Division VI. You must serve a motion or answer within 20 days after service of this Original Notice upon you by using the Iowa Judicial Branch Electronic Document Management System (EDMS) at www.iowacourts.state.ia.us/efile, unless you obtain from the court an exemption from electronic filing requirements. If you do not file your appearance, motion or answer within 20 days from the date you are served with this Original Notice, judgment by default will be rendered against you for the relief demanded in the application.

CLERK OF COURT
Polk County
500 Mulberry Street
Des Moines, IA 50309

NOTE: The attorney who is expected to represent the Defendants, should promptly advise Plaintiff of this notice.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA Coordinator at 1-515-286-3394. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).

STATE OF IOWA JUDICIARY

Case No. LACL129799

County Polk

Case Title FAIDLEY VS. UNITED PARCEL SERVICE OF AMERICA INC

THIS CASE HAS BEEN FILED IN A COUNTY THAT USES ELECTRONIC FILING.

Therefore, unless the attached Petition and Original Notice contains a hearing date for your appearance, or unless you obtain an exemption from the court, you must file your Appearance and Answer electronically.

You must register through the Iowa Judicial Branch website at <http://www.iowacourts.state.ia.us/Efile> and obtain a log in and password for the purposes of filing and viewing documents on your case and of receiving service and notices from the court.

FOR GENERAL RULES AND INFORMATION ON ELECTRONIC FILING, REFER TO THE IOWA COURT RULES CHAPTER 16 PERTAINING TO THE USE OF THE ELECTRONIC DOCUMENT MANAGEMENT SYSTEM:
<http://www.iowacourts.state.ia.us/Efile>

FOR COURT RULES ON PROTECTION OF PERSONAL PRIVACY IN COURT FILINGS, REFER TO DIVISION VI OF IOWA COURT RULES CHAPTER 16: <http://www.iowacourts.state.ia.us/Efile>

Scheduled Hearing:

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at (515) 286-3394 . (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.)

Date Issued 03/03/2014 11:20:34 AM



District Clerk of Polk

County

/s/ Anisa Argullin

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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

JERRY LEE FAIDLEY,

Plaintiff,

v.

**UNITED PARCEL SERVICE OF
AMERICA, INC.,**

Defendant.

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Case No. _____

PETITION AND JURY DEMAND

COMES NOW the Plaintiff, Jerry Lee Faidley, by and through his attorneys, Sherinian & Hasso Law Firm P.C., and for his Petition and Jury Demand against the Defendant, United Parcel Service of America, Inc., states as follows:

INTRODUCTION

This is an action to redress discrimination and retaliation based on disability of the Iowa Civil Rights Chapter 216, Code of Iowa; to award full back pay and benefits, liquidated damages, fees and expenses; and any and all other benefits of his employment to which he would have been entitled to had he not been the victim of discrimination.

THE PARTIES

1. The Plaintiff, Jerry Lee Faidley, (hereinafter referred to as Faidley) is, and was at all times relevant hereto, a citizen and resident of Colfax, Jasper County, Iowa.

2. Defendant, United Parcel Service of America, Inc., (hereinafter referred to as UPS) is an Ohio corporation with its principal place of business in Atlanta, Georgia, and is licensed to do business in Iowa.

3. The Plaintiff has been employed by the Defendant since May 1977 in Polk County, Iowa.

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JURISDICTION

4. On September 9, 2013, Faidley filed his complaint of disability discrimination and retaliation claims with the Iowa Civil Rights Commission, a copy of which is attached hereto as "Exhibit A".

5. On December 2, 2013, the Iowa Civil Rights Commission issued an Administrative Release (letter of right-to-sue), a copy of which is attached hereto as "Exhibit B".

6. On December 5, 2013, the EEOC, issued a Notice of Right to Sue, a copy of which is attached hereto as "Exhibit C".

7. The Plaintiff has met all of the conditions precedent to the filing of this lawsuit.

BACKGROUND

8. Faidley was hired by UPS in May, 1977, as a full-time employee; the past twenty-five years he has worked as a delivery driver for UPS.

9. Faidley was injured on the job in January, 2011.

10. As a result of that injury, Faidley was required to undergo hip replacement surgery in October, 2011.

11. Faidley returned to work on April 27, 2012, with difficulty completing an eleven hour work day.

12. Faidley submitted his work restrictions to UPS on May 15, 2012, restricting him to work no more than eight hours in a work day.

13. On May 15, 2012, UPS claimed it did not have a delivery driver position that accommodated an eight hour work day and refused to allow him to work.

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14. After repeated requests for accommodation from Faidley to return to his old position, in February 2013, UPS offered Faidley two part-time positions that appeared to be within his restrictions. When he presented himself for work, UPS assigned him two different part-time that were considerably more strenuous.

15. After two days of working the different positions, Faidley's pain in his back was too great and he returned to his doctor. His doctor then required him to only work half-days until he could increase his strength and stamina.

16. UPS refused to accommodate Faidley's part-time restrictions and would not allow him return him to work.

COUNT I

Chapter 216 Code of Iowa (2009) (Disability Discrimination)

17. Plaintiff repleads the allegations of the preceding paragraphs as if fully set forth herein.

18. Plaintiff incorporates the allegations contained in his charges of discrimination as if fully set forth herein.

19. Plaintiff is disabled within the meaning of Section 216.2 Code of Iowa (2009).

20. Plaintiff was an employee of Defendant as defined in Section 216.2 Code of Iowa (2009).

21. Defendant is an employer within the meaning of Section 216.2 Code of Iowa (2009) and employs more than fifteen (15) persons.

22. Defendant discriminated against the Plaintiff in the terms and conditions of his employment because of his disability in violation of Chapter 216 Code of Iowa

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(2009) by, among other things, failing to reasonably accommodate his disability and failing to engage in an interactive process to determine, in good faith, whether there were any reasonable accommodations for his disability.

23. The Defendant also discriminated against Plaintiff by constructively discharging him in the violation of Chapter 216 Code of Iowa (2009).

24. As proximate cause of the discriminatory actions by Defendant, Plaintiff has been damaged. Specifically he has suffered lost wages and benefits, emotional and mental anguish, humiliation, embarrassment, and loss of enjoyment of life.

25. Defendant acted intentionally, maliciously, and/or with reckless indifference to the rights of Plaintiff and knew or should have known that its actions were illegal, and, therefore, punitive damages are appropriate.

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment against Defendant and award damages, including damages for lost wages and benefits, emotional distress, mental anguish, compensatory relief, punitive damages, reasonable attorney fees, and court costs with interest, as provided by law and such other and further relief including reinstatement and back pay, as the Court deems just and equitable.

COUNT II

Chapter 216 Code of Iowa (2009) (Retaliation)

26. Plaintiff repleads the allegations of the preceding paragraphs as if fully set forth herein.

27. Plaintiff incorporates the allegations contained in his charges of discrimination as is fully set forth herein.

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28. Plaintiff is disabled within the meaning of Section 216.2 Code of Iowa (2009).

29. Plaintiff was an employee of Defendant as defined in Section 216.2 Code of Iowa (2009).

30. Defendant is an employer within the meaning of Section 216.2 Code of Iowa (2009) and employs more than fifteen (15) persons.

31. Defendant retaliated against the Plaintiff in the terms and conditions of his employment because he pursued an accommodation for his disability and because he filed a complaint of discrimination with the Iowa Civil Rights Commission, in violation of Chapter 216 Code of Iowa (2009).

32. As proximate cause of the retaliatory actions by Defendant, Plaintiff has been damaged. Specifically, he has suffered lost wage and benefits, emotion and mental anguish, humiliation, embarrassment and loss of enjoyment of life.

33. Defendant acted intentionally, maliciously, and/or with reckless indifference to the rights of Plaintiff and knew or should have known that its actions were illegal, and therefore, punitive damages are appropriate.

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment against Defendant and award damages, including damages for lost wages and benefits, emotional distress, metal anguish, compensatory relief, punitive damages, reasonable attorney fees, and court costs with interest, as provided by law and such other and further relief including reinstatement and back pay, as the Court deems just and equitable.

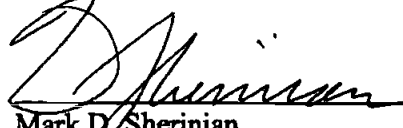
JURY DEMAND

23. Plaintiff hereby demands a trial by jury in this matter.

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Respectfully Submitted,

SHERINIAN & HASSO LAW FIRM P.C.



Mark D. Sherinian AT0007173

E-mail: sherinianlaw@msn.com

Melissa C. Hasso AT0009833

E-mail: mhasso@sherinianlaw.com

630 Colony Park

3737 Woodland Avenue

West Des Moines, IA 50266

Telephone (515) 224-2079

Facsimile (515) 224-2321

ATTORNEYS FOR PLAINTIFF

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IOWA CIVIL RIGHTS COMMISSION COMPLAINT FORM

Complaint of Discrimination under Iowa Code Chapter 216, "Iowa Civil Rights Act of 1965"

NOTE: A copy of this complaint will be sent to the Organization or person you are filing against.

(AGENCY USE ONLY)	
ICRC CP# _____	Iowa Civil Rights Commission
Local Commission# _____	400 East 14 th Street
EEOC# _____	Des Moines, IA 50319-0201
515-281-4121 / 800-457-4416 / Fax: 515-242-5840 / http://www.state.ia.us/government/crc	

(TYPE OR PRINT)

1. What is your legal name? Jerry Lee Faidley2. What is your mailing address? 737 Clark Street
City: Colfax State: Iowa Zip Code: 500543. Telephone #: 515.554.64774. Your date of birth? [REDACTED] Your sex/gender? Male

5. Please check the AREA in which the discrimination occurred.

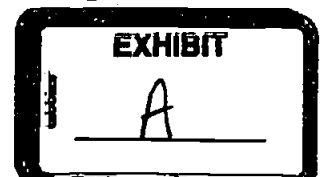
☒ Employment
Education☐ Public Accommodation
Credit☐ Housing

6. Please check the ACTION that the Organization took against you. (Check all that apply)

Demotion
☒ Denied Accommodation/Modification
 Denied Benefits
 Denied Financial Services/Credit
 Denied Service
 Disciplined/Suspended
 Eviction
 Failure to Hire
 Failure to Promote
 Failure to Rent

Failure to Train
 Forced to Quit/Retire
 Harassment
☒ Laid-Off/ Failure to Recall
 Reduced Hours
 Reduced Pay
 Sexual Harassment
 Terminated
 Undesirable Assignment/Transfer
 Unequal Pay

Other: _____

7. Do you believe you were discriminated against because of your Race? N/A
If yes, what is your Race? _____8. Do you believe you were discriminated against because of your National Origin? N/A
If yes, what is your National Origin? _____9. Do you believe you were discriminated against because of your sex? N/A

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10. Do you believe you were discriminated against because of your sexual orientation? N/A
If yes, what is your sexual orientation? _____
11. Do you believe you were discriminated against because of your gender identity? N/A
12. Do you believe you were discriminated against because of a disability, real or perceived?
Yes. If yes, what is your disability? I am unable to walk significant distances without pain, unable to lift above my shoulders more than twice per hour and unable to lift more than 70 lbs. I am also limited in the major life activity of working because of my various physical limitations.
13. Do you believe you were discriminated against because of your religion or creed? N/A
What is your religion or creed? _____
14. Do you believe you were discriminated against because of your pregnancy or pregnancy related issues? N/A
15. If your complaint involves employment or credit, do you believe you were discriminated against because of your age? No.
16. If your complaint involves housing or credit, do you believe you were discriminated against based on your familial status? N/A If yes, how many children live with you? _____
17. If your complaint involves credit, do you believe you were discriminated against based on your marital status? N/A If yes, what is your status? _____
18. If you have previously complained to anyone within the organization or the ICRC or reported discrimination or participated as a witness, do you believe you have suffered an adverse action or been treated differently since you complained about discrimination?
Yes
If yes, how were you retaliated against and by whom? UPS refuses to accommodate my disability.
19. What is the Full Legal Name of the Organization that discriminated against you? [This Organization will be charged with discrimination & given a copy of your Complaint]
United Parcel Services (UPS)
City: Des Moines County: Polk County State: Iowa
Zip Code: 50316 Telephone #: 515.263.7585
20. If the organization listed in #18 has a Parent Organization or Corporate Office list it here.
[This Organization will also be charged with discrimination and given a copy of your complaint.]
City: _____ State: _____ Zip Code: _____ Telephone #: _____
21. Provide the address of the location where the discrimination occurred.
Address: United Parcel Service, 2609 Dixon, Des Moines, Iowa 50316

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22. If Employment is the Area, give approximate number of ALL employees (full-time & part-time) at ALL employer locations nationwide (**REQUIRED**):
- | | | | | | |
|------|-------|--------|---------|---------|--------|
| 4-14 | 15-19 | 20-100 | 101-200 | 201-500 | X 500+ |
|------|-------|--------|---------|---------|--------|
23. Have you filed this complaint with any other Federal, State, or Local anti-discrimination agency? Yes X No
If yes, what agency? _____ When? _____
24. If you are claiming an individual discriminated against or harassed you, identify the individual(s). [The individual[s] will be charged with discrimination and will be given a copy of your complaint.]
If more than two, list those individuals on a separate document and provide.
25. What was the date of the **MOST RECENT** discriminatory incident? (Month Day, Year)
July 10, 2013
26. If Employment is the Area, what is your hire date or application date? May 1977
Are you still employed by the Organization listed in #18? X Yes No
If no, when did your employment end? _____ (Month Day, Year)
If no, how did your employment end? Terminated Forced to Quit Quit

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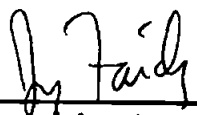
BRIEF SUMMARY OF ALLEGATIONS. Please describe what happened to you. How were you discriminated/harassed/retaliated against. Please be sure to address each action you identified. Insure that your summary reflects the basis you previously identified. *Please read the instruction before writing your brief summary if you have questions.*

I have worked for United Parcel Services (UPS) for thirty-five years, and for twenty-five of those years I have worked as a delivery driver. In January of 2011, I was injured at work which ultimately required me to have hip replacement surgery in October, 2011. I returned to work on April 27, 2012, and after I complained of hip pain which caused me to be restricted to working an 8 hour day, UPS refused to accommodate me.

I filed a complaint with the Iowa Civil Rights Commission (See C.P. # 8-12-63087) and grieved the company's refusal to return me to my previous driver's position work because I was unable to work more than 8 hours per day. After a hearing on my grievance and repeated applications for open positions, UPS offered me part time work as a loader. I returned to work but was given two very different positions that were much more physically demanding. I worked for two days but the pain in my back was too great. I consulted my physician who requested that I be allowed to return to work on a part time until I could increase my strength and stamina. UPS refused to allow me to return to work on a part time basis.

Eventually, after consultation with the company physician, I was allowed to work without a time limitation but with certain lifting restrictions (no more than 70 lbs and only lifting above shoulder level twice per hour.) I provided UPS with my doctor's new restrictions on March 12, 2013. Two months later, on May 22, 2013, I was interviewed by a HR representative regarding my physical limitations. I also informed the company of the various positions I believe I was capable of performing. They have refused to consider me for several of these positions and has refused to return me to work in the two positions that they believe I am capable of performing.

UPS has discriminated against me by failing to accommodate my disability in an expeditious manner, failing to return me to work and retaliating against me because I previously filed a complaint of discrimination.

X  9/6/2013
Signature of Complainant Date

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**Administrative Release
(Letter of Right-To-Sue)**

To:) From:
MR. JERRY FAIDLEY)
737 CLARK STREET) Iowa Civil Rights Commission
COLFAX, IA 50054) Grimes State Office Building
) 400 E. 14 th Street
) Des Moines, Iowa 50319
Complaint CP# 09-13-64766 EEOC# 26A-2013-01083C	

This is your Administrative Release (Right-To-Sue) Letter issued pursuant to Iowa Code Section 216.16 and 161 Iowa Administrative Code Section 3.10. It is issued pursuant to the Complainant's request.

The following conditions have been met:

1. The complaint was timely filed with the Iowa Civil Rights Commission (ICRC) as provided in Iowa Code Section 216.15(12);
2. Sixty (60) days have expired since the complaint was filed with ICRC;
3. None of the exceptions set forth in Administrative Rule 161 – 3.10(4) are applicable.

With this Administrative Release, the Complainant has the right to commence an action in district court. That action must be commenced within ninety (90) days of the issue date 12/2/2013. *The Right-to-Sue Letter is not a finding by ICRC on the merits of the charge. ICRC will take no further actions in this matter.*

A copy of this Administrative Release/Letter of Right-To-Sue has been sent to the Respondent(s) and counsel(s) as shown below. The Code allows any party to obtain a complete copy of the case file after a Right-To-Sue has been issued. Requests for copies should be directed to Annette Flaherty at ICRC.

The Iowa Civil Rights Commission
Phone: (515) 281-4121
FAX: (515) 242-5840

cc: File
MARK D. SHERINIAN, Complainant's Attorney
MARK G. JACOBS, Respondent's Attorney
UNITED PARCEL SERVICES (UPS)
UPS WORLD HEADQUARTERS



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AC

EEOC Form 181-B (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Jerry L. Faidley
737 Clark Street
Colfax, IA 50054

From: Milwaukee Area Office
310 West Wisconsin Ave
Suite 800
Milwaukee, WI 53203

☐

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

26A-2013-01083

Ora M. Holland,
State & Local Coordinator

(312) 869-8078

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA must be filed in a federal or state court **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

☐

More than 180 days have passed since the filing of this charge.

☒

Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.

☒

The EEOC is terminating its processing of this charge.

☐

The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

☐

The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court **WITHIN 90 DAYS** of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.

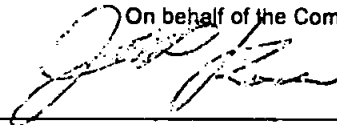
☐

The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission



John P. Rowe,
Director

DEC 05 2013

Enclosures(s)

(Date Mailed)

cc: UNITED PARCEL SERVICE
Attn: Human Resource Manager
2609 Dixon Street
Des Moines, IA 50316

SHERINIAN & HASSO LAW FIRM
Attn: Mark Shennian
3737 WOODLAND AVENUE, Suite 630
West Des Moines, IA 50266

